

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHARLES MALMBERG
18 Lorraine Drive
Cortland, New York 13045

Plaintiff,

-vs-

UNITED STATES OF AMERICA,

Defendant.

VERIFIED COMPLAINT

Civil Action No.

Plaintiff CHARLES MALMBERG, by his attorneys PAUL WILLIAM BELTZ, P.C., as
and for his complaint, herein alleges upon information and belief that:

1. The jurisdiction of this Court is based upon the Federal Tort Claims Action, codified
at 28 U.S.C. §1346 and 28 U.S.C. §2671 et seq.

2. The plaintiff CHARLES MALMBERG, at all times relevant, was a citizen of the
United States, domiciled in Town of Cortland, County of Cortland, State of New York.

3. The Syracuse Veteran's Administration Medical Center, a/k/a Syracuse VAMC, at all
times relevant, holds itself out to the public as an institution capable of providing proper medical
care and services to United States Veterans.

4. The Syracuse VAMC, is an agency of the defendant, the UNITED STATES OF
AMERICA.

5. Pursuant to 28 U.S.C. §§1346, 2674 and 2679, the defendant UNITED STATES OF
AMERICA is liable for the negligent acts and omissions of those employees, agents, and
representatives working for the Syracuse VAMC, if such negligent act or omission is committed
within the scope of office or employment.

6. On or about November 4, 2004, CHARLES MALMBERG underwent surgery at the
Syracuse VAMC. Upon information and belief, the defendants, its employees, agents, and

representatives, departed from accepted medical practice prior to and during such surgery and after the surgery, resulting in serious and permanent injuries to the plaintiff.

7. The plaintiff, CHARLES MALMBERG, duly presented an administrative claim for damage, injury, or death (SF 95) on January 18, 2006, pursuant to 28 U.S.C. § 2675.

8. The Department of Veteran's Affairs has failed to make a final disposition of the administrative claim within six (6) months, thereby denying such claim under 28 U.S.C. 2675.

**AS AND FOR THE FIRST CAUSE OF ACTION
AGAINST THE UNITED STATES OF AMERICA**

9. The plaintiff repeats, restates, and realleges each and every allegation set forth above, with the same force and effect as if more fully set forth herein.

10. During the plaintiff's admission to the Syracuse VAMC in November, 2004, the defendant UNITED STATES OF AMERICA, its employees, agents and representatives, carelessly and negligently rendered medical care and treatment to the plaintiff, CHARLES MALMBERG which was not in accordance with good and accepted medical practice.

11. As a direct and proximate result of the negligence and carelessness of the UNITED STATES OF AMERICA, its employees, agents, and representatives, the plaintiff was seriously and permanently injured.

12. At all times relevant, the plaintiff, CHARLES MALMBERG, was exercising due care and diligence.

13. By reason of being injured, the plaintiff, CHARLES MALMBERG, is entitled to recover monetary compensation for his personal injuries against the defendant.

**AS AND FOR THE SECOND CAUSE OF ACTION
AGAINST THE UNITED STATES OF AMERICA**

14. The plaintiff repeats, restates, and realleges each and every allegation set forth above, with the same force and effect as if more fully set forth herein.

15. Prior to surgery conducted on November 4, 2004, the defendant through its employees, agents and/or representatives failed to obtain the informed consent of the plaintiff to perform the surgery.

16. As a direct and proximate cause of the negligence of defendant, the plaintiff, CHARLES MALMBERG, suffered severe, permanent and painful injuries.

17. At all times relevant, the plaintiff, CHARLES MALMBERG, was exercising due care and diligence.

18. By reason of the foregoing, the plaintiff, CHARLES MALMBERG, is entitled to recover monetary compensation for his personal injuries, against the defendant.

WHEREFORE, the plaintiff , CHARLES MALMBERG, demands judgment against the defendant UNITED STATES OF AMERICA for each of the above causes of action, together with interest, costs, and disbursements. The combined claim is for six million dollars (\$6,000,000.00).

Dated: Buffalo, New York
August 11, 2006

Submitted by:

PAUL WILLIAM BELTZ, P.C.

/s/ Robert B. Nichols, Esq.
Attorneys for the Plaintiff
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Buffalo, New York 14202
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VERIFICATION

CHARLES MALMBERG, being duly sworn, says he is the Plaintiff in the within action; I have read the foregoing Summons and Complaint and know the contents thereof; the same is true to my knowledge, except as to matters stated therein to be alleged on information and belief, as to those matters I believe to be true.

/s/Charles Malmberg

18 Lorraine Drive
Cortland, New York 13045

Sworn before me on this 2nd
day of August, 2006

/s/ Sandy F. Samson
Notary Public of State of New York
Cortland County Exp. Date - 2/28/07